IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings
	)	Under Chapter 13
DONALD R. CLIFTON,	)	
	)	
Debtor.	)	BK No. 92-30733
	)	
THOMAS MATZEN,	)	Chapter 13
	)	
Debtor.	)	BK No. 92-50856
	)	
EVERETT and ROBERTA YOUNG,	)	Chapter 13
	)	
Debtors.	)	BK No. 92-41261
	)	
CHARLES A. MARBLE,	)	Chapter 13
	)	
Debtor.	)	BK No. 92-30824
	)	
THOMAS A. DEETS,	)	Chapter 13
	)	
Debtor.	)	BK No. 92-50872
	)	
HAROLD INLOW,	)	Chapter 13
	)	
Debtor.	)	BK No. 92-51083
	)	
LESTER FRISSE,	)	Chapter 13
	)	
Debtor.	)	BK No. 92-50788

OPINION

In each of these chapter 13 cases, the plan proposes to pay nondischargeable child support obligations in full while proposing substantially less than 100% payment on other unsecured claims.[1] The chapter 13 trustee has filed an objection in each case on the basis that the plans unfairly classify unsecured claims. The question this Court must decide is whether a chapter 13 plan may

[1]The percentage paid to other unsecured creditors varies. Some plans are 10% plans, while others propose to pay as much as 70%.

provide for the separate classification and treatment of unsecured claims for child support arrearages.

Under section 1322(b)(1) of the Bankruptcy Code, a plan may "designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated...." 11 U.S.C. § 1322(b)(1). Thus, a debtor may separately classify unsecured claims if the classification (1) complies with section 1122 of the Bankruptcy Code, and (2) does not result in unfair discrimination among the separately grouped claims. In re Leser, 939 F.2d 669, 671 (8th Cir. 1991).

Section 1122 provides, in relevant part, that "[a] plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). While this section specifies when claims may be included in the same class, "it does not tell us when they must be." In re Leser, 939 F.2d at 671 (emphasis in original). More specifically, nothing in section 1122 "prohibit[s] the placement of substantially similar claims in different classes." Hanson v. First Bank of South Dakota, N.A., 828 F.2d 1310, 1313 (8th Cir. 1987). To conclude otherwise "would conflict with section 1322(b)(1), which specifically authorizes designation of more than one class of unsecured creditor...." In re Leser, 939 F.2d at 671. Accordingly, the separate classification of child support obligations does not violate section 1122.

The more critical question is whether the separate classification unfairly discriminates against the other unsecured creditors. In

resolving this question, it is important to note that "by allowing for separate classes of unsecured claims, Congress anticipated some discrimination, otherwise separate classes would have no significance. It is only unfair discrimination that is prohibited." In re Storberg, 94 B.R. 144, 146 (Bankr. D. Minn. 1988) (emphasis added).

The Code does not define what constitutes unfair discrimination within the meaning of section 1322(b)(1). However, courts generally apply a four-part test to determine whether a proposed classification scheme is fair. The following factors are considered: (1) whether the discrimination has a reasonable basis; (2) whether the debtor can carry out a plan without the discrimination; (3) whether the discrimination is proposed in good faith; and (4) whether the degree of discrimination is directly related to the basis or rationale for the discrimination. In re Leser, 939 F.2d at 672 (citing In re Wolff, 22 B.R. 510, 512 (Bankr. 9th Cir. 1982)).

Other courts that have applied this test in the context of child support obligations emphasize the "overwhelming public policy" in favor of providing support for children. See In re Leser, 939 F.2d at 672; In re Storberg, 94 B.R. at 147. Based on this public policy, the courts in both Leser and Storberg held that the separate classification of child support obligations in a chapter 13 plan does not result in unfair discrimination. In re Leser, 939 F.2d at 672-73; In re Storberg, 94 B.R. at 147-48. As summarized by the court in Storberg:

> In this case we have a debtor who has fallen behind in his child support, but wishes to use chapter 13 as a vehicle to cure arrearages and remain current. It is difficult to justify discouraging him in what should be seen as an

> admirable endeavor. Thus, in light of the overwhelming public policy in favor of providing for support of children, I cannot say that the debtor's separate classification for such support is unfair.

Id. at 147.

This Court agrees that the public policy favoring support for children must be considered in determining whether a debtor may separately classify child support payments. That policy is manifested in a number of state statutes. See, e.g., Ill. Rev. Stat. ch. 40, 11 1101 (making it a misdemeanor, under certain circumstances, to fail to pay child support); Ill. Rev. Stat. ch. 40, ¶ 1107.1 (allowing income withholding as a mechanism for enforcing child support arrears); Ill. Rev. Stat. ch. 40, ¶ 1201 (Revised Uniform Reciprocal Enforcement of Support Act). Likewise, the Bankruptcy Code contains certain provisions favoring child support claimants. For example, section 362(b)(2) excepts from the automatic stay collection of child support obligations from property that is not property of the estate,[2] while section 523(a)(5) provides that support obligations are nondischargeable.[3]

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[2]Section 362(b)(2) provides that "[t]he filing of a petition ... does not operate as a stay ... under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate...." 11 U.S.C. § 362(b)(2).

[3]Section 523(a)(5) provides that "[a] discharge ... does not discharge an individual debtor from any debt ... to a spouse, former spouse, or child of the debtor, for alimony ... or support...." 11 U.S.C. § 523(a)(5).

While 11 U.S.C. § 1328(a)(2) provides that student loans are also nondischargeable in a chapter 13 case, that provision alone "does not evidence a position as favored in public policy as are alimony and child support payments." In re Scheiber, 129 B.R. 604,

In light of the clear public policy favoring support for children, the Court can only conclude that debtors have satisfied the four-part test described above. As to the first factor, public policy considerations alone provide the "reasonable basis," or rationale, for the discriminatory treatment. With respect to the second element--whether debtors can carry out a plan without the discrimination--it is difficult to conceive of confirming a plan that does not provide for 100% payment of child support arrearages, since public policy dictates full payment of these obligations during the life of the plan. The third factor requires the Court to determine whether the discrimination is proposed in good faith. In each of the above referenced cases, there is nothing in the record to indicate, and the trustee has not suggested, that the proposal to repay child support obligations in full was made in bad faith. Based on the information before it, the Court can only conclude that the discrimination was proposed in good faith. Finally, the Court must consider whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Stated another way, "does the basis for the discrimination demand that this degree of differential treatment be imposed?" In re Wolff, 22 B.R. at 512. While there is, for example, a great differential between the 100% payout proposed for child support claimants and the 10% proposed for other unsecured creditors, the basis for the discrimination--the strong public policy favoring support for children--clearly justifies this differential.

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606 (Bankr. D. Minn. 1991).

Accordingly, for the reasons stated, IT IS ORDERED that the trustee's objection to confirmation in each of the above referenced cases is OVERRULED.

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: March 8, 1993